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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JENNIFER NICOLE BUDRE,

Defendant and Appellant.

F076963

(Super. Ct. No. MCR044701A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Madera County. Joseph A. Soldani, Judge.

Thomas Owen, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and Erin Doering, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Franson, Acting P.J., Smith, J. and Snauffer, J.

INTRODUCTION

Appellant Jennifer Nicole Budre was found guilty of 12 counts of felony animal cruelty, in violation of Penal Code¹ section 597, subdivision (b). She contends defense counsel rendered ineffective assistance at the suppression hearing.² We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On July 25, 2011, at the request of animal control services, Budre called equine veterinarian, Dr. Kristen Wallert, and asked her to examine three horses at a property on House Ranch Road. Budre did not own the property; it was owned by her mother, Laurie Budre, and grandmother. Budre's mother's husband, Clarence Spear, lived on the property. Budre went to the property periodically to help care for the horses there.

Wallert went to the property on July 25, 2011. She spoke briefly with Budre. Budre paid for the exams with her credit card but did not stay while Wallert examined the horses. Wallert found each of the horses had sand in its gut.

Wallert gave specific verbal instructions to Spear on proper feeding of the horses and use of a product to clear the sand out and left Budre written instructions with her invoice for services because she had left. One of the instructions Wallert gave was for a 30-day follow-up exam for the horses; no 30-day follow-up was ever arranged.

Amy Toler, an investigator with Madera County, went to the property on August 31, 2011, with Officer Tiffany Beechinor of animal control services and Wayne Easley of code enforcement to investigate reports of "severely emaciated" horses. They were met at the property by Budre and her mother. Budre told Toler that she owned the horses. Budre's mother denied owning any of the horses. Spear claimed he owned one of the horses and was the caregiver for all 12 horses.

¹ References to code sections are to the Penal Code.

² Budre's appeal from the restitution order imposed in her case is before this court in case No. F078049.

Toler and the animal control officers weighed, examined, and took photographs of nine of the 12 horses. On September 8, 2011, Toler returned to the property to serve a search warrant and seize the horses. Spear was present but Budre and her mother were not. Toler seized all 12 horses that day.

Wallert went to the property with animal control services the day the 12 horses were seized. All 12 horses had their ribs showing; ribs should never show on a healthy horse. The only feed Wallert saw for the horses “were little bits of hay left over in one of the pastures” which Wallert described as “crumbs, basically.”

Wallert found sand in the intestines of all 12 horses, indicating the horses had not been fed properly and were scavenging the ground for food and ingesting sand. One horse was in such poor physical condition that it had to be euthanized. After removal, the 11 remaining horses progressed and gained weight with proper food and no extraordinary treatment.

Budre was interviewed by Sergeant Dan Kerber on February 29, 2012. At that time, she denied owning any of the horses.

Preliminary Hearing

The preliminary hearing was held on September 6, 2013. Toler testified to what she had learned about the horses and the property in the course of her investigation. Toler stated she learned that Spear and Budre’s mother lived at the property; title was held in the name of Hazel Preshington. Spear was at the property when the horses were seized and told Toler he owned one horse and the other horses were owned by Budre. Budre was responsible for providing the feed and Spear was the caregiver. Toler also testified that in her conversation with Budre, Budre told her the horses belonged to her and not her mother.

When Toler was at the property on August 31, 2011, she had each horse brought out and asked Budre its name, age, and owner. Budre provided all this information and “stipulated” she was the owner of all the horses.

Toler was present when the horses were examined for weight on September 8, 2011. After the horses were seized, there was “significant weight gain” on 11 of the horses; the 12th horse had been euthanized on the day it was taken into custody. The 11 horses were all healthy after several months in custody. They had gained between 100 and 200 pounds each and their “body scores” were up.

Trial Proceedings

A first amended information charging Budre with 12 counts of felony cruelty to animals, pursuant to section 597, subdivision (b), was filed on October 7, 2014.

Budre’s mother testified for the defense. She claimed Budre did not own the horses and was not responsible for them. However, she also testified that beginning in July 2011, Budre provided food, money, and advice to Spear to assist in caring for the horses. Budre’s mother claimed that she owned the horses and previously denied ownership of the animals on the advice of her attorney.

The jury found Budre guilty of all 12 counts. The trial court sentenced Budre to five years’ probation, one condition of which was that she serve 180 days in the county jail.

Budre filed a timely notice of appeal.

DISCUSSION

Budre contends defense counsel rendered ineffective assistance because her attorney failed to request a stipulation to enter the preliminary hearing transcript into evidence at the suppression hearing and that failure to do so was prejudicial. We disagree.

Motion to Suppress

On December 30, 2016, Budre filed a motion to suppress evidence, contending the search warrant was not supported by probable cause and evidence was obtained unlawfully by a person acting as an agent of law enforcement. Budre maintained there was not sufficient probable cause in the search warrant and accompanying affidavit to indicate a felony had been committed. Budre also argued Wallert had obtained evidence unlawfully.

In opposition to the motion, the prosecutor argued Budre failed to establish an expectation of privacy because she did not own or live at the property where the horses were kept, and she could not assert a privacy right of another person, such as her mother or Spear. The prosecutor also maintained Wallert was not acting as an agent of the county.

At the April 28, 2017 hearing on the motion to suppress, the trial court took judicial notice of the search warrant and affidavit. Defense counsel proceeded to argue the standing issue and that Budre had an expectation of privacy. Defense counsel argued that Budre was the one who met with Toler at the property and who Toler described as the owner of the horses.

The prosecutor noted that Toler testified at the preliminary hearing that Budre claimed to own the horses but did not agree the affidavit stated Budre owned the horses. The trial court noted that the preliminary hearing was not “evidence in these proceedings.”

When the trial court suggested someone should “testify that they are the owner” of the horses, defense counsel stated that Budre should not “be obligated to do this when she is pending trial.” Defense counsel did not want Budre to “incriminate herself in any manner that can be used against her at trial.” Defense counsel continued to argue that the

affidavit provided sufficient evidence to establish Budre's standing because Budre was the person Toler contacted about the horses.

The trial court ultimately ruled that Budre did not have "sufficient standing" to challenge the search warrant.

Standard for Ineffective Assistance of Counsel

The standard of review when questioning whether a defendant received effective representation is well established. "In order to establish a claim for ineffective assistance of counsel, a defendant must show that his or her counsel's performance was deficient and that the defendant suffered prejudice as a result of such deficient performance. [Citation.] To demonstrate deficient performance, defendant bears the burden of showing that counsel's performance ' " " "fell below an objective standard of reasonableness ... under prevailing professional norms." ' ' ' [Citation.] To demonstrate prejudice, defendant bears the burden of showing a reasonable probability that, but for counsel's deficient performance, the outcome of the proceeding would have been different." (People v. Mickel (2016) 2 Cal.5th 181, 198.)

Analysis

Budre contends her defense counsel was ineffective for not obtaining a stipulation from the prosecution to admit the preliminary hearing transcript into evidence at the suppression hearing. It is purely speculative to suggest the prosecutor would have entered into such a stipulation, thereby depriving the prosecution of the ability to cross-examine any witness regarding matters pertaining to standing to challenge the search warrant.

As for having an expectation of privacy and standing to challenge the search warrant, Budre never claimed to be an owner of the property, or that she lived at the property, and there was no information indicating she was an overnight guest at the property. Budre was legitimately a visitor to the premises, but that status alone does not

confer standing to challenge a search warrant. (See, e.g., *Minnesota v. Carter* (1998) 525 U.S. 83, 90; *People v. Rios* (2011) 193 Cal.App.4th 584, 591–592; *People v. Cowan* (1994) 31 Cal.App.4th 795, 800–801.)

Furthermore, Budre disclaimed any ownership interest in the horses when she was formally interviewed by law enforcement. “It is settled law that a disclaimer of proprietary or possessory interest in the area searched or the evidence discovered terminates the legitimate expectation of privacy over such area or items.” (*People v. Stanislawski* (1986) 180 Cal.App.3d 748, 757.) A defendant who disclaims an ownership interest in an object, in this case the horses, cannot take a “contrary position in an effort to attain standing to seek to exclude that object from evidence.” (*People v. Dasilva* (1989) 207 Cal.App.3d 43, 49.) Denial of ownership is “virtually the equivalent of an implied consent to search.” (*People v. Mendoza* (1986) 176 Cal.App.3d 1127, 1133.)

Defense counsel did not want to have Budre testify at the suppression hearing and possibly “incriminate herself in any manner that can be used at trial.” It is apparent defense counsel made a tactical decision to not introduce any evidence of ownership of the horses from any source because the defense strategy was to disclaim ownership. Great deference is accorded to trial counsel’s tactical decisions. (*People v. Lewis* (2001) 25 Cal.4th 610, 661.)

There is no basis for concluding defense counsel lacked a rational basis for her tactical decision to not produce evidence of ownership of the horses at the suppression hearing. (*People v. Lewis, supra*, 25 Cal.4th at p. 661.) Furthermore, a claim of ineffective assistance of counsel is more properly raised in a petition for writ of habeas corpus where defense counsel is provided an opportunity to respond to any claims of ineffective assistance. (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1051.)

DISPOSITION

The judgment is affirmed.